THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION No.2668 OF 1999

DATED: 21.11.2007

Between:

A.P.S.E.B. rep. by its Superintending Engineer, Operation Circle, Mint Compound, Hyderabad.

.. Petitioner

And

M.A. Quadir died per L.R. Smt Tahera Banu and another.

.. Respondents

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WRIT PETITION No.2668 OF 1999

ORDER:

This writ petition is filed challenging the award, dated 01.08.1998, passed in I.D.No.52 of 1996 on the file of Labour Court-I, Hyderabad.

2. Petitioner is the management and 1st respondent is the workman. It appears, when the services of the 1st respondent-workman were terminated by the petitioner- management, he approached the Labour Court by way of an application under Section 2-A (2) of the Industrial Disputes Act, 1947 (for short 'the Act'). It was the case of the 1st respondent that he joined the service of the petitioner-management as Stores Assistant in the year 1964 and, while working as such, he fell sick in the last week of March 1993 and, hence, applied for leave from 01.04.1993 to 30.04.1993, which was extended upto 15.09.1993. On 16.09.1993, he submitted fitness certificate, upon which he was admitted to duty and was directed to report before Assistant Divisional Engineer/C.III, Hyderabad, pending regularization of his leave. But, the Assistant Divisional Engineer did not admit him to duty as he, being not a technically qualified person, was not useful in his office. Therefore, he came back to his parent division, but was not given posting orders. While so, his sickness

continued and, hence, he applied for leave from 26.10.1993. Thereafter, on his requests, on 21.04.1994, the Divisional Engineer posted him under the control of ADE/CBD/C.III, pending regularization of his leave. The said officer also did not admit him to duty stating that his services were not required in his office. Then, he visited the office of the Divisional Engineer (Electrical), Operation, City-III, Hyderabad, almost every day requesting to admit him to duty. In the meantime, his health was deteriorated and could not go to office, and sent leave applications whenever he could not attend to duty. Finally, on 09.08.1994, Assistant Divisional Engineer informed that his services were surrendered to Divisional Engineer and asked him to report before the Divisional Engineer. But, the Divisional Engineer also did not give him posting orders. Several representations submitted by him seeking posting orders went in vain. However, an ex-parte enquiry was conducted alleging unauthorized absence against him and he was, ultimately, removed from service.

3. Petitioner-management filed counter and resisted the application.

4. The Labour Court, after detailed consideration of the entire material placed before it, held that there was enough material to conclude that the 1st respondent was absent without any leave application and prior sanction of leave, and also there was no material like medical certificate to prove the nature of disease suffered by the 1st respondent and, therefore, the finding of the Enquiry Officer has to be upheld. However, it was further held that in respect of an employee absent himself from duty, order of removal is harsh. Therefore, while upholding the report of the Enquiry Officer with regard to absence of

1st respondent from duty amounting to misconduct, punishment of removal from service imposed on him was held to be harsh. Ultimately, the Labour Court ordered reinstatement of the 1st respondent with continuity of service and attendant benefits and denied backwages. Aggrieved by the said award, the management preferred this writ petition.

5. There is no necessity of going into al the details. The Labour Court ordered only reinstatement with continuity of service, but without any backwages. While admitting the writ petition, on 22.04.1999, in W.P.M.P.No.3262 of 1999, interim stay of the impugned award was granted on condition that the 1st respondent-workman is reinstated back into service, within a period of eight weeks from the date of receipt of a copy of the order. It is not known as to whether the 1st respondent-workman was reinstated into service, pursuant to the said interim order dated 22.04.1999, or not. Be that as it may, the 1st respondent has passed away on 11.12.1999 and his wife has been brought on record as his legal representative.

6. In the facts and circumstances, I am of the opinion that the Labour Court has not committed any error in passing the impugned award, directing reinstatement of the 1st respondent with continuity of service and without backwages, exercising its powers under Section 11-A of the Act, calling for interference of this Court under Article 226 of the Constitution of India. The writ petition is devoid of merits and is liable to be dismissed.

7. The writ petition is, accordingly, dismissed. No costs.

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JUSTICE C.V. RAMULU

21st November, 2007.

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